

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 3:18-CV-01289

**MATTHEW MALLORY,
COMMONWEALTH ALTERNATIVE
MEDICINAL OPTIONS LLC,
GARY KALE, GRASSY RUN
F FARMS, LLC, their agents,
servants, assigns, attorneys, and all
others acting in concert with the
named defendants,**

Defendants.

**RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE
TO FILE AN AMENDED VERIFIED COMPLAINT**

COMES NOW, Defendant Matthew Mallory (“Mallory”) and Defendant Commonwealth Alternative Medicinal Options LLC (collectively “CAMO Defendants”), by and through counsel, and responds to the Motion for Leave to File an Amended Verified Complaint for Declaratory Relief; Temporary, Preliminary, and Permanent Injunctive Relief; Asset Forfeiture; and Civil Penalties filed by the United States of America (“Government”) as follows:

CAMO Defendants acknowledge the latitude typically afforded to a party’s request to amend its pleading. *See generally* Fed. R. Civ. P 15(a). However, in this instance, CAMO Defendants question the need for such an amendment when the dispositive issue in this matter is fully before the Court and is not altered by the proposed Amended Complaint. *See* “Effect of an Amended Pleading,” 6 Fed. Prac. & Proc. Civ. § 1476 (3d ed.) (“[D]efendants should not be required to file a new motion to dismiss simply because an amended pleading was introduced

while their motion was pending. If some of the defects raised in the original motion remain in the new pleading, the court simply may consider the motion as being addressed to the amended pleading. To hold otherwise would be to exalt form over substance.”)

As of the hearing on September 17, 2018, the dispositive legal issue related to this matter was fully briefed, argued, and before the Court, i.e. whether the transport of industrial hemp across state lines from one State’s Pilot Program to another constituted a violation of the West Virginia Industrial Hemp Pilot Program and ultimately a violation of the Controlled Substance Act. An answer to this legal question in the negative will dispose of the Government’s claims. At the hearing, the Court indicated that it did not require additional briefing on the matter. Despite this indication by the Court, the docket reveals numerous additional briefing and motions on various topics.

Furthermore, the Government asserts that, with the exception of the addition of new parties to the suit, the amendments are “minor in nature” and represent “[n]o substantive changes”. (ECF No. 48.)¹ Accordingly, by the Government’s own admission, the amendment does not impact the dispositive legal issue currently before the Court. Indeed, the proposed Amended Complaint itself recognizes that the Court is now considering an issue of law that will be determinative of the issues in this matter. (*See ECF No 48-1, ¶ 48.*)

Accordingly, the effect (if not the purpose) of this Motion would be to further delay resolution of this case. Indeed, the Government has had the “new” facts upon which it purports to base its amendments for over two months, yet only now seeks this amendment only after the

¹ The Government’s Amended Complaint incorporates a legal theory not articulated in its original Complaint regarding the alleged requirement for the CAMO Defendants to obtain a Drug Enforcement Agency registration or permit. (ECF 48-1 at ¶¶ 40-42.) However, the Government first introduced this misguided legal theory in its Memorandum in Opposition to Defendants’ Motion to Dissolve Ex Parte Temporary Restraining Order and In Opposition to the Motion for Preliminary Injunction (ECF No. 24) to which CAMO Defendants fully responded in their Reply To Memorandum In Opposition (ECF No. 25). Accordingly, this issue has also been fully briefed.

various issues previously before the Court have been addressed, leaving only the Defendants' respective Motions to Dismiss unresolved.

Moreover, the filing of an Amended Complaint would necessitate service of process on the new parties (which, to the extent possible, the undersigned would be willing to accommodate), responsive pleadings by both the current and new parties that will involve 12(b) motions, and the filing of additional rounds of briefing associated with such motions—adding only time and not substance to the Court's consideration of the dispositive issue. Accordingly, in light of the foregoing, the CAMO Defendants request that the Court hold the Government's Motion to Amend in abeyance until the Court has ruled upon the pending Motions to Dismiss.

Respectfully submitted,

/s/ Carte P. Goodwin

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CERTIFICATE OF SERVICE

I, Carte P. Goodwin, hereby certify that on this day, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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Dated this 21st day of November 2018.

/s/ Carte P. Goodwin
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